

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :  
vs. : No. 3:02CR 00334 (PCD)  
HERMAN JAMES :

ORDER RE PENDING MOTIONS

Defendant's Pending Motions, he being charged in relation to counterfeit currency, for obstruction of justice and as a felon in possession of a firearm, are decided as follows:

1) Defendant's Motion to Exclude Evidence (Doc. # 43). Defendant seeks exclusion of a cassette tape and evidence on a cassette purporting to record an alleged conversation between defendant and a cellmate on January 9, 2003. The motion is denied. The government has disclaimed an intent to offer it in evidence. If, as the government notes, its intent changes due to an ability to enhance the audibility of the tape, its admissibility may be considered anew.

2) Defendant moves to receive Jencks Act material in advance of trial (doc. #57). This aspect of the motion is denied as moot as the government has arranged to do so on January 6, 2004. The motion also seeks preservation of rough notes (doc. # 66). This aspect of the motion is also denied as the government has agreed to do so but also has disclosed the notes of the monitoring done by agents. Notes on which typed reports or written memoranda were based need not be produced as the government has agreed to produce the reports and memoranda. The notes shall be preserved for the court's review, in camera, should defendant, after reviewing the reports and memoranda requests such review to determine justification for their production to demonstrate inconsistency with documents, if used at

trial, and/or testimony of involved agents.

3) Defendant moves for disclosure of Grand Jury testimony of witnesses who are to testify at trial (doc. #58). The government agrees to such production as to Agent Stuart Collier and has arranged to do so. The motion is not limited to Agent Collier but it is not clear from any further assertion by defendant that the government's response does not exhaust the request. Thus the motion is denied as it appears to be moot, reserving to defendant the right to renew the motion if the claim does extend to other witness' Grand Jury testimony.

4) Defendant moves in limine to suppress evidence of narcotics or controlled substances as they may be related to defendant (doc. # 59). It is claimed that such evidence would not be relevant to either of the charges against defendant but any relevance, if any, would be outweighed by the resulting prejudice to defendant in the jury's consideration of the charges he does face in this case. The government claims evidence of drug dealing by defendant would tend to prove knowledge of the presence of the firearm in the room he had occupied. Admission of the evidence would be authorized for the limited purpose of showing defendant's knowledge and/or possession of the firearm since it is known, and accepted, that persons involved with narcotics possess and use firearms for security to protect their narcotics and proceeds of narcotics trafficking. U.S. v. Rivera, 844 F. 2d 916, 926, (2d. Cir. 1988). As knowledge and possession is an element of the felon in possession charge, the evidence of his narcotics involvement would be relevant and admissible. The Motion in Limine is denied but defendant will be entitled to a limiting instruction if requested in a proper form, duly submitted. Further, since this ruling is premised on the evidence reflecting drug dealing on the part of defendant, unless at trial the evidence actually offered is to that effect, and thus constitutes a foundation for the inference claimed, this

ruling may be reconsidered on the basis of the record then established.

5) Defendant moves for production of statements of promises, rewards or inducements, (doc. # 61). The government's response asserts its having provided such information and is assumed to have provided all such. The motion is denied as moot.

6) Defendant moves, in limine, for disclosure of impeaching evidence, (doc. #62) intended to be used by the government and for a hearing to show its prejudice outweighs its relevance. The government notes its intent to use evidence of defendant's convictions recited in the charge that defendant was a felon in possession of a firearm, a conviction on September 18, 1998 of larceny and an arrest on February 3, 2001. The latter will be excluded as not within rule 609. The convictions on which the felon in possession charges are premised are, without question admissible as elements of that offense. The conviction of September 18, 1998, limited to the fact of the conviction but without reference to the underlying charge, will be admissible if defendant testifies. The offer of impeaching evidence, if defendant testifies, to the effect of his use of counterfeit money on other occasions than those charged will be excluded as redundant and likely to be more prejudicial than probative even if a limiting instruction is given. The same ruling applies to defendant's possession of counterfeit merchandise which has the infirmity of prejudice but also of having limited probative value except as to knowledge and modus operandi.

6) Defendant moves for disclosure of information pertinent to of experts to be used by the government, (doc. # 63). The government's response notes three experts that may be used, their expected testimony and their qualification. The motion is complied with, and is denied as moot.

7) Defendant moves for disclosure of Rules 404(b) and 608(b) evidence intended to

be used by the government (doc. #64). The government's response describes its intentions in these regards and as thus in compliance the motion is denied as moot.

8) Defendant moves for reconsideration of his prior motion to sever (doc, # 68). The prior motion was fully briefed and apparently denied with no written memorandum on June 23, 2003. No new bases for the motion are recited and both sides rely on the previously filed memoranda. This motion is deniable as untimely, having been filed on December 23, 2003, well over 10 days after the June 23, 2002 denial. See L.R. Crim. P., Rule 1(c) as it applies, to criminal proceedings, L.R.Civ. P. Rule 7(c). It is further deniable as, in effect, it seeks review of a decision in the case by another judge of this court and raises no new issues, facts or law not previously raised and thus considered in relation to the prior denial. However, a review of the merits reflects the unavailability of defendant's claim of irrelevance and prejudice. Defendant's prior conviction, an element of count three, is cited as the reason for defendant's method for using an intermediary to pass the counterfeit currency as charged in count one. In addition, defendant's knowledge and possession of the gun could be explained by a need for security in relation to his drug activity which is claimed to have been intertwined with his counterfeiting activity. Further if defendant chooses to testify, his prior conviction would be admissible for impeachment purposes. Any prejudice can be avoided by a limiting instruction, which has essentially been effective in this court's experience with juries and which defendant is at liberty to frame and request be given. Lastly, what the jury will hear will solely be the fact of conviction attendant to which there is a minimal risk of being considered as significant except as to impeachment when a proper limiting instruction is given. Accordingly, the Motion to Reconsider is denied.

Summary: Plaintiff's motions ## 43, 57 58, 59, 61 , 62(except as noted herein), 63,

64, 66 and 68 are denied as set forth herein.

SO ORDERED:

Dated at New Haven, Connecticut this 7<sup>th</sup> day of January, 2004.

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PETER C. DORSEY  
UNITED STATES DISTRICT JUDGE